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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8186 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

DIVISIONAL CONTROLLER

Versus

ALIAS MUSTAFAKHAN PATHAN

Appearance:

MR YS LAKHANI for Petitioner
MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/06/98

ORAL JUDGEMENT

Gujarat State Road Transport Corporation has preferred the present writ petition to challenge the order passed by the Labour Court, Baroda in Ref. (LCV)

No.912 of 1995. The respondent Alias Mustafakhan Pathan was working as a conductor with the petitioner. According to the petitioner, the respondent was absent from his duty between 1.1.95 and 31.1.95 without obtaining any leave. On account of the said absence, the respondent was charge sheeted and a departmental inquiry was held against him and he was dismissed from service from 12.7.1995.

2. Being aggrieved by the said decision in the departmental inquiry, he approached the authorities and the Reference in question No. 912 of 1995 came to be made before the Labour Court, Baroda. The respondent had not disputed the departmental inquiry held against him. The only question which was urged before the Labour Court was as regards the quantum of punishment. It was contended that in view of the charge and the circumstances in which the respondent had remained absent, the punishment was grossly inadequate. The Labour Court finding favour with the said contention, by order dated 31.3.97 allowed the said reference by directing the corporation to reinstate the respondent herein with 50 percent back wages. It is vehemently urged before me by the learned advocate for the petitioner that as a matter of fact there is no punishment to the respondent. It is also further urged before me that the Labour Court was not justified in awarding 50 percent back wages when there is no material on record to show that as a matter of fact he was not employed.

3. Admittedly, the reference was under section 11-A of the ID.Act. The charges against the respondent was of his absence between 1.1.95 and 31.1.95. During conciliation proceedings it was brought out that as a matter of fact the respondent had applied for leave and there was no sanction of his leave by the authorities. The respondent, while resuming his duties had come with a fitness certificate and had also brought medical certificate to show his illness during the period of his absence. In view of these circumstances, it could not be said that the respondent was absent from his duties without any reasonable cause. No doubt, his leave was not sanctioned by the authorities but when he had produced medical evidence to show that he was in fact ill, merely because the authorities were not pleased to accept the same and sanction the leave, it could not be said that respondent had committed such a misconduct that he deserves punishment of dismissal from service.

4. When the Labour Court orders reinstatement of a workman along with 50 percent back wages, it is quite obvious that the Labour Court considers the non payment of 50 percent of wages as punishment. Therefore, in the circumstances, I am unable to accept the contention of learned advocate for the petitioner that though his absence was proved, he has not been punished. In my opinion, non payment of 50 percent of wages is a punishment awarded to the respondent.

5. The contention of learned advocate for the petitioner is that there was no material on record to show that he was not employed during the said period but from the order and material produced before me it is not possible to hold that there was any dispute raised by the present petitioner before the Labour Court as regards the claim of respondent getting reinstatement with back wages. If at all there was a dispute regarding the claim of back wages by the original respondent, then definitely the Labour Court would have gone into that question and would have given reasons about the same as to why he was allowing back wages or that he was not allowing the same. Therefore, at this stage it is not possible for me to interfere with the said finding of the Labour Court while exercising powers under Article 227 of the Constitution. In my opinion, in view of the nature of the alleged misconduct which has been committed in the peculiar circumstances of the case, the order passed by the Labour Court could not be said to be such so as to interfere with the same by exercising powers under Article 227 of the Constitution. I therefore, reject this petition. No costs.

(S.D.Pandit.J)